

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

---

COMPLETE TITLE OF CASE:

KATINA PIATT, ET AL.

Appellants

v.

INDIANA LUMBERMEN'S MUTUAL INSURANCE COMPANY, ET AL.

Respondents

---

DOCKET NUMBER WD76645

DATE: June 10, 2014

---

Appeal From:

Circuit Court of Cole County, MO  
The Honorable Patricia S. Joyce, Judge

---

Appellate Judges:

Division Three  
Anthony R. Gabbert, P.J., Victor C. Howard, and Thomas H. Newton, JJ.

---

Attorneys:

Thomas Pirmantgen, Jefferson City, MO

Counsel for Appellants

---

Attorneys:

Robert Luder, Overland Park, KS  
John Weist, Overland Park, KS  
Michael Hackworth, Piedmont, MO

Counsel for Respondents  
Co-Counsel for Respondents  
Co-Counsel for Respondents

---

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

KATINA PIATT, ET AL., Appellants, v. INDIANA LUMBERMEN'S  
MUTUAL INSURANCE COMPANY, ET AL., Respondents

**WD76645**

**Cole County**

Before Division Three Judges: Gabbert, P.J., Howard, and Newton, JJ.

Appellants appeal the circuit court's granting of summary judgment to Insurance Company (ILM) related to a \$7 million judgment in a wrongful death action. Appellants had filed an equitable garnishment claim against ILM for payment of the underlying judgment against its insured/policyholder Flowers. Appellants filed a motion for summary judgment, arguing that the ILM policy covers Flowers as an executive officer. ILM filed a cross motion for summary judgment, arguing that Flowers is not covered for the claim. Appellants appeal.

**REVERSED AND REMANDED.**

**Division Three Holds:**

Appellants raise nine points on appeal. We find the first point dispositive with respect to addressing Appellants' arguments in all points, except those that concern notice and vexatious refusal to pay. In point one, Appellants argue that the circuit court erred in granting ILM's motion for summary judgment because Flowers is insured as an executive officer.

As the moving party seeking summary judgment, ILM bore the burden of proving that it was entitled to judgment as a matter of law by establishing that there was no coverage for Appellants' claim based on the terms of the policy. To determine coverage, we look to the insurance contract. We enforce clear and unambiguous language as written. The policy clearly defines three categories of insureds—employer, employees, and executive officers.

The circuit court erred in granting summary judgment to ILM because it based its decision on an irrelevant analysis of whether Flowers was the deceased's employer in contravention of the plain language of the policy. Under the terms of the policy, Flowers is an executive officer. The policy provides coverage for executive officers. Accordingly, we grant Appellants' first point.

The circuit court granted summary judgment on two additional grounds—inadequate notice to ILM of amendments to the underlying petition and a denial of Appellants' assertion of ILM's vexatious refusal to pay the judgment. The amendment changed Mr. Flowers's classification from a "co-employee" to an "executive officer." ILM had notice of the initial claim against an employee of its named insured. ILM opted not to defend based not on Appellants' assertion that Mr. Flowers was a "co-employee," but instead because ILM viewed all claims for workers' compensation and bodily injury to be excluded from coverage, regardless against whom they were asserted. Thus, this amendment could not have prejudiced ILM as a matter of law. Accordingly, we grant points six and seven.

In point nine, Appellants argue that the circuit court erred in granting summary judgment on the denial of their assertion of ILM's vexatious refusal to pay the judgment. The circuit court reasoned that there could be no vexatious refusal claim because this was a third-party liability policy, not a first-party policy, and because, based on the facts, ILM had not acted vexatiously—even if it had denied coverage. Appellants challenge the second basis for the circuit court's ruling, but failed to develop the first. Because Appellants failed to develop an argument to challenge the trial court's assessment of the applicability of a vexatious refusal claim on third-party contracts in their brief, the issue is deemed abandoned on appeal.

Therefore, we reverse and remand.

Opinion by Thomas H. Newton, Judge

June 10, 2014

\* \* \* \* \*

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**